Supreme Court, U. S.
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MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1975

File No. 74-1623

CHESTER SLONE, ET AL ..... APPELLANTS

VS:

DESKINS BRANCH COAL CO., ET AL..... APPELLEES

ON APPEAL FROM THE UNITED STATES
DISTRICT COURT
FOR THE EASTERN DISTRICT OF KENTUCKY

SUPPLEMENTAL MEMORANDUM FOR APPELLANTS

C. KILMER COMBS
KELSEY E. FRIEND LAW FIRM
P. O. Box 512
Pikeville, Kentucky 41501

Attorney for Appellants

PRINT MASTER INC., 845 Lane Allen Rd., P.O. Box 4183, Lexington, Ky. 40504, Ph. 277-5134

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MAY IT PLEASE THE COURT:

The lapse of time makes us wonder if deference to *Dunlop* v. *Turner Elkhorn Mining Co.*, No. 74-1032, and *Turner Elkhorn Mining Co.* v. *Dunlop*, No. 74-1316, is a factor. If so, we would point out one erroneous assumption by the Solicitor General in footnote 3, page 4 of his Memorandum for the United States.

He asserts, "If the federal program should be invalidated, then appellants would be eligible for the higher benefit schedules under state law, and

their equal protection argument would be moot." This is not so.

The plaintiffs are 1973 claimants and their cases have become final under state law. Up to now they have received the discriminatory benefits. If the judgment below is summarily affirmed, this Court will in substance approve the discrimination applied by the Kentucky Workmen's Compensation Board and upheld by the Kentucky Courts. The principle of res adjudicata would apply and time would bar vacating the awards. Appellees so asserted below.

The sole remedy would be individual motions to re-open filed separately before the Kentucky Workmen's Compensation Board on the ground of mistake of law under KRS 342.125, and these would have prospective effect only under subsection (1) with questionable practical results.

Appellants, the 1973 claimants as a class, can obtain practical relief only by reversal with directions to proceed as a class action. 1974 and 1975 claimants are now in the same bind. Only by injunctive relief below can the Kentucky Workmen's Compensation Board be required to revise the awards and rectify the discrimination.

Respectfully submitted,

C. KILMER COMBS
KELSEY E. FRIEND LAW FIRM
P. O. Box 512
Pikeville, Kentucky 41501

Attorney for Appellants